

CORRECTED TRANSCRIPT

Interview with **ALBERT BEVERIDGE**Interviewed by **BETTY KING**

Albert Beveridge is a partner in the law firm of Beveridge & Diamond. Before Marion Barry could run for election as Mayor in 1978, he had to challenge as unconstitutional a provision of the DC Election Act that barred an elected office holder from running for another office unless the office he held expired on or before the date on which he would assume his new office or he resigned from his current office – a so-called “resign to run” law. Barry had two years left in his term on the City Council. Beveridge and his colleague, Andrew Mishkin, argued the case successfully (448 F. Supp. 1249 (1978)), enabling Barry to run for Mayor. Mayor Barry appointed Beveridge to be Chairman of the DC Board of Elections and Ethics. In that role he led the challenging and contentious process of correcting the DC voting rolls and rectifying the many problems facing the Board.

October 23, 2015

INTERVIEWER: Today is the 23rd of October, 2015. My name is Betty King and I am talking with Albert Beveridge.

Al, when did you come to D.C.?

ALBERT BEVERIDGE: I came in the fall of 1962, right out of law school.

INTERVIEWER: And you worked here—

ALBERT BEVERIDGE: And I worked here first, in my career, I clerked for a federal judge, Walter Bastian, who lived just up at the Westchester [apartment building, next to the site of this interview], one year, then I went to the Washington office of Cleary Gottlieb. Then I went to the Department of Justice for 2 years. I was in the Tax Division and liked it very much but that was the beginning of the real dust-up of the Vietnam War, so I quit Justice and went and worked on Bobby Kennedy's campaign, in Oregon and New York. When that came acropper I came back to D.C. and joined the firm of Ginsburg, Feldman and Bress, and worked my way up and became a partner there.

In 1974, an old friend, a friend of the family's, really, who had grown up in Indianapolis, Indiana, with me, Bill Ruckelshaus, came by one day in the office, with someone I hadn't known, Richard Fairbanks, also from Indianapolis. I remember very vividly getting a call from the receptionist who said, "There are two gentlemen here to see you." And I said, "Who are they?" and she said, "Mr. Ruckelshaus and Mr. Fairbanks." So I knew Ruckelshaus, and I'd known him, of course, when he came in the Civil Division at the EPA [Environmental Protection Agency], and this was after the so-called Saturday Night Massacre [when President Nixon dismissed special

prosecutor Archibald Cox, and Attorney General Elliot Richardson and Deputy Attorney General William French Smith resigned on October 20, 1973, during the Watergate scandal].

We were friendly but he hadn't made an appointment in advance, so I said, "Show them into the room." And I walked in and I said, "What can I do for you gentlemen?" Bill said, "Let's start a law firm." And I thought about it maybe 10 seconds, and I said, "Okay, I'm in." So, we started a firm, then called Ruckelshaus, Beveridge and Fairbanks, and now called Beveridge & Diamond, because we were joined by Henry Diamond after about 5 or 6 months.

INTERVIEWER: And when did you meet Marion Barry?

ALBERT BEVERIDGE: I don't know when I met Marion Barry, very frankly. I do not know, in fact, the circumstances which led to my being retained, so to speak, to handle his case. It's a bit of a fog to me. I had, during my time at Ginsburg, Feldman, that firm, on a pro bono basis, done some work before the Board of Elections. I just don't know what the cases were and so forth, but I do remember either challenging petitions, or defending petitions, or something.

So, I was known a little bit as having some knowledge about election law, although, as I say, I did it on a pro bono basis, so it wasn't anything that I could make a profession out of. And I think that's probably how Marion sort of got my name, because, frankly, I did not participate on any of his elections prior to representing him. Sorry you can't ask Marion, "How you did you know about Beveridge?"

INTERVIEWER: Tell me the basis for the lawsuit.

ALBERT BEVERIDGE: All right. Well, the lawsuit involved a so-called resign-to-run statute. In part of the original D.C. charter, it provides that anyone seeking elected office had to either occupy an office that was coterminous with the office that they were seeking or had to resign from the office. I don't quite know the political science reason for this, because it's crazy as far as I'm concerned, but it meant that they didn't want someone to be able to run for office, lose the office, and go back to the position they held before. So, it was a so-called resign-to-run law.

I'm jumping ahead a little bit. It's not uncommon in some states that certain positions require you to resign to run, for example, if you are a judge it is considered a potential conflict of interest so you had to resign your judgeship to run for office, and there may be a few others. But just on the basis of the length of time or the period of the office you held, that's quite unusual.

INTERVIEWER: So your argument was—

ALBERT BEVERIDGE: So Marion came in and said, "Will you represent us?" Of course, I knew who Marion Barry was. He was bigger than life. He was accompanied by a distinguished Howard law professor, whose name escapes me.

INTERVIEWER: Herb Reid?

ALBERT BEVERIDGE: Herb Reid. There you go. Thank you. Herbert Reid, yes, and I'd known him by reputation, Herbert Reid. This has a relevance later in the story, because I sort of wondered, well, why didn't Reid do it himself, because he certainly was a distinguished lawyer.

So, we had just started the firm, for a couple of years. We weren't over-busy, let me tell you. So, I said to myself—and I discussed it with my partners—I'm going to represent Marion Barry and this is the nature of the suit and we're going to do it on a pro bono basis. Do you have any problems? And they didn't have any problems at all with it. So, we put together a complaint—I remember that. We wanted to get a resident of each of the wards, so there was a clearly a so-called standing, and we filed a complaint alleging unconstitutionality of the charter provision.

Shall I go into what the state of the law was?

INTERVIEWER: No. I mean, yes, anything that you think is—

ALBERT BEVERIDGE: Just babble away. Okay. All right.

So, we did this, without having really thoroughly researched it, and there weren't very many cases. There was one very strong case from the fifth circuit that upheld a resign-to-run statute—I think it was Georgia—but it applied to judges. So, when we framed our complaint—and this was going to be handled clearly on a so-called motion for summary judgment. I mean, the facts were undisputed.

So, what we did was take the reasoning of the fifth circuit case, which pointed the other way, and used it in terms of arguing that although that case had found that it was constitutional to require a judge to resign, that it should not apply in our case. Now, the state of the law then was a little bit crazy. It was, if, in fact, it was a so-called fundamental right, then a court would give special scrutiny to something like the resign-to-run law. Usually it had to do with racial discrimination of one kind or another. But if it wasn't a fundamental right, the plaintiffs had a special burden to bear, to prove the unconstitutionality.

But if you think about it, it's sort of a crazy form of analysis, because a judge or a court says, "Yes, that's a fundamental right, and therefore we give it strict scrutiny," or "No, it's not a fundamental right and we don't give it strict scrutiny." But what makes it fundamental or not fundamental? I mean, in this case was the right to run for office fundamental? Well, we've made a case that it was, but it really didn't make a lot of sense. In fact, the whole body of law didn't make a lot of sense.

So, I will tell you what won the case for us. We go to court, a district court. We didn't know what judge we were going to have. I walk in. The place was packed. I don't remember if my wife even got a seat. The media was there. Everybody was there, because Marion Barry was larger than life, even before he became mayor, so this was pretty important because they knew if he won the case he was going to run. I don't know what he would have done if we had lost the case, but when I asked him, in the preliminary part, "Marion, why is this so important?" he

said, very frankly, "Albert, I need the money. I need my salary I get." It was either—was he the chairman of the—

INTERVIEWER: No. He was an at-large member of the City Council.

ALBERT BEVERIDGE: At-large member. He was an at-large member. But he said, "I need the money." Perfectly reasonable argument.

INTERVIEWER: He couldn't have a year without income.

ALBERT BEVERIDGE: Precisely. He couldn't have a year without income. So, I go in there, and I was pretty used to making arguments because at Justice I had argued in all the circuit courts in the country, but this was still big time, because usually I didn't argue in front of the media. And they were all there, the *Post*, and the *Times*, and legal rags. So, we sit down and stand up and in walks [Judge] Gerhard Gesell. Gesell was a former partner at Covington & Burling. I did not know him personally but I knew him by reputation, and his reputation was the highest. I mean, it was not just questions of integrity and sincerity and all that stuff, he was a real lawyer's lawyer. He was terrific.

So, we sit down and he said, "All right, Mr. Beveridge, you have the podium," so I go up there and start my argument. And I go along and seems not to be terribly persuaded nor very interested. And then he asked me a question, and I don't remember the question but I answered it. And he says, "You're wrong, counsel," and then proceeds to read something from the D.C. Code, which showed that I was wrong. Not a great way to start an argument.

So, I go along a little bit and then he asked me another question and I think I handled it adequately. But I could tell that I wasn't getting very far because this fundamental right just didn't mean anything. He said, "It's a fundamental right to run for office," and I said, "Well, yes, under these circumstances," but that, as I already said, really doesn't make a lot of sense. It's just the whim of the judge as to whether it's fundamental or not fundamental.

And then something occurred to me and I, in retrospect, am ashamed at myself for not having thought of it before and put it in our brief, because we had filed a brief in our motion for summary judgment. I looked up at him and said, "You know, your honor, if you are going to run for mayor of the district, you're going to have to be known by the electorate, and the most likely way you will establish a reputation and get known by the electorate is to have occupied an elected position somewhere in the district government." And I said, "If this provision of the charter is enforced, something like 13 of the 26 members, elected individuals—school board, city council—would have to resign." And I hadn't checked my math exactly but I was about right.

INTERVIEWER: Yeah.

ALBERT BEVERIDGE: And I looked up and I could it was just as if he were in a dark closet and had turned on a light bulb. And I saw him reach down, scribble something, and then I started

continuing to argue, and you could tell that he wasn't terribly interested. I could tell, right at that moment, that I had him. As I say, in retrospect I thought, God, why hadn't I thought of that argument and put it in our brief, because this was a crushing argument.

Anyway, the district gets up and the attorney gets up and argues for the—

INTERVIEWER: So the Corporation Counsel [the equivalent in the DC government of an attorney general]—

ALBERT BEVERIDGE: Yeah, so yeah, because we were having the charter provision declared unconstitutional, so the Corporation Counsel got up—the Department of Justice didn't argue; it was the Corporation Counsel—and it was sort of desultory. He said, "No, it's not a fundamental right," et cetera, et cetera.

Anyway, a few weeks later we get a decision—big win.

INTERVIEWER: Wonderful.

ALBERT BEVERIDGE: Big win. But there was a little coda, if I may say so. The first question was, would the district feel, or the Department of Justice feel they had to intervene on appeal, but they didn't want to appeal. There was no real public interested in resigning. But there was another candidate who was running for mayor by the name of Japhuna Lawrence. I don't know why I remember the name except when you're involved with these cases you remember odd things, and his name was Japhuna Lawrence. He didn't have much of a chance running against Marion, but he filed an appeal. So, we were going to defend it, and I turned to one of my associates, a lawyer in our firm, and I said, "Find out some cases where an intervener does not have the right to appeal." So, he/she—I'm not going to disclose the gender—comes back and says, "Established law is that interveners have all the rights of a party, and they have a perfect right to appeal."

So, I said to myself, I don't care. First, I don't believe it, and so we're going to have to bring in somebody else. So, I brought in another young associate, and instead of saying, "Tell me what the law is," I said, "We are going to argue that this Japhuna Lawrence has no right to appeal." So, this young lawyer—

INTERVIEWER: Find me some case law.

ALBERT BEVERIDGE: Yeah. Well, there wasn't a lot of case law on our side, but we came up with an argument, and it was a decent argument. So, we go up to the Court of Appeals. Now, this young lawyer became, eventually, a bond lawyer. Now bond lawyers, this means that you usually work with very long instruments, that are very convoluted. The language has been worked over by lawyers and judges and courts and all that for years, so very little changes, and all changes are extremely significant and very, very subtle.

So, this gentleman, who is a very fine lawyer, was the essence of a bond lawyer, which means, among other things, you very seldom get a straight yes and no. You almost always get, in an

answer to any question, "Well, it sort of depends." So anyway, I'll give his name. His name is Andrew Mishkin. He's a nice guy. I said, "Andrew, you handle the intervener argument and I'll take over the constitutional argument." So, we go up to the D.C. Court of Appeals and Andrew gets up first to argue his point, which I hoped was going to be the strongest, and one of the judges looked down and said, "Mr. Mishkin, if I understand your argument, your argument that Mr. Lawrence has no more right to appeal than somebody who is walking in front of Prettyman Courthouse down there, comes in and says, 'I don't like that case. I'm going to appeal.' Isn't that the essence of your argument?" And I sat there just trembling, because this guy has never given a yes or no answer, one, and two, it isn't quite that simple. And Andrew says, "Exactly, your honor."

[Laughter.]

ALBERT BEVERIDGE: I said, "He's going to be my partner some day because he knew the perfect answer under the circumstances, a simple 'Yes, your Honor'." So, we got a dismissal—it wasn't even an opinion—a dismissal of the case, and it was all over.

INTERVIEWER: So you were free and clear and Marion could run.

ALBERT BEVERIDGE: Marion didn't have to resign. He could run.

INTERVIEWER: Now after he got elected, Marion appointed you to—

ALBERT BEVERIDGE: Yes. He appointed as me Chairman of the Board of Elections [and Ethics], a dubious reward which I thought, I sort of liked public service and I thought it was something I could do, and I didn't have to compromise my profession for it at all, and it might bring some credit to the firm. As it turned out, that was not the case. So, I started as chairman and it turns out that our voting rolls were in just terrible shape, bad. We were dropping people right and left that come in, that have to vote what was called a challenged ballot, and then, subsequently, a couple of weeks later, when we were doing the cleaning up we'd find out they were registered voters, the vote would count, but it was just a terrible mess, and I was extremely nervous.

So, the first thing I did was call in David Kreeger and Geico. I knew David. He had a lot of civic pride and made contribution to our civic life, and I said, "You guys in the insurance company know about keeping rolls, because you're an insurance company. Can you come in and look at our system and tell us what to do?" So, they looked at the system and they said, "We think it's in bad shape, and we're not making any guarantees but we'll give it a shot." So, they tried to straighten it out, but what happened was—and I don't remember which election it was; you'd have to look it up—I was extremely nervous because the press clearly knew that we were in bad shape in terms of our voter rolls. So, I asked—I forget the gentleman who oversaw computer services, but I said, "Give me a run on all the precincts in which we have elected officials, all the council," I don't know where the school board was, but certainly all the council, the mayor, "and get it to me the evening before."

So about six or seven o'clock I got the list, and I was horror-stricken, because, among other things, Marion Barry had been dropped from the rolls of his own precinct.

INTERVIEWER: Oh, no.

ALBERT BEVERIDGE: So can you imagine what the embarrassment would be if the mayor shows up and they can't find his name in his own precinct?

So, what I did was order them to prepare sheets—and there were a few other council members in the same circumstance. So, I ordered sheets that could be inserted in the voter rolls so it wouldn't look too suspicious, and put Marion back in his precinct and so forth, and then personally deliver it, until about two o'clock in the morning, to the precinct captains, these sheet that contained the elected officials who had not been included, personally, and it ended about two o'clock in the morning, I remember.

So, I go off the next day and I prayed that it wouldn't go badly. Well, I neglected to look at one other person. There's no way I would have certainly anticipated this in advance, but I forgot to check on the registration of Katherine Graham, the owner of the *Washington Post*. So, when she showed up at her precinct in Georgetown, she was not on the roll and she had to vote challenged ballot. As a result of that, the *Post* really got on our case, and they sicced a very attractive young female reporter on me. She told me, subsequently, that Katherine Graham came down the next day, to the city room, where she did not appear very often. She would appear at the editorial board and the international, but not in the city room, and said, "We want you to go after the Board of Elections."

Well, we knew we were under scrutiny, and they went after, first, to see if there was any malfeasance or any corruption or anything. They couldn't find any. We basically pleaded incompetence, rather than any other thing, that we were incompetent, and it was sad.

I want to bring up one point. Marion Barry was extremely loyal, very, very loyal, because he was getting all of this flack, and I think it was Sharon Pratt Dixon [elected DC Mayor for one term in 1990] was either subsequently—my chronology isn't perfect—started making the Board of Elections an election issue, and she was advised by Patricia Harris—remember, she was HEW [Department of Health, Education and Welfare] secretary [in the President Carter administration].

INTERVIEWER: Of course. Patricia Roberts Harris.

ALBERT BEVERIDGE: Yes, very distinguished. So, they were going after us personally. I remember we did two things. First of all, I made a suggestion. I never met with the editorial board of the *Post* but I made a suggestion that made it into the *Post*, that we should re-register voters in the district. So, I get a call from Marion, and he says, "Come up. Albert, things are not going so well, are they?" and I said, "No, they're not, Marion." The first thing I want to say is that he never trashed us at all. I was—and you may want to excise this—but I think I was one of the very few white individuals he appointed to a significant office. It could have been so easy

for him to say, "Well, this is a mess that Beveridge has created, and he will have to get out of it," or something.

INTERVIEWER: No, he would never—

ALBERT BEVERIDGE: He never did that. But he said, "Look, Albert. Let's not talk about re-registration. Registration is buzzword in the African American community." I said, "Point well taken, Marion. Sorry. I won't refer to it as re-registration anymore." But that was one of the two things that we did, which is not to re-register but we kept, and got authority from the City Council, we kept a record of people who were registering, and for the next three or four elections we created a list of people who, in fact, were registered and had come in and voted. And if you didn't appear in the last 3 or 4 years, your name was stricken. That was the main problem. We were carrying so much dead weight and we did not keep renewing the rest of it. So, it took care of itself.

The other thing we did was go to Buffalo and get a guy called Telly—it's not Telly Savalas but it was a Greek guy, who I figured knew how to run elections in Buffalo, because Buffalo was very conscious of elections, and he came in and sort of brought some professionalism into the office. So, it turned out all right at the end but it was a real trial by fire, because outside of our offices at 1333 New Hampshire Avenue, I would look out from my office and I would say, "Uh oh." There would be three mics set up and I think the gentleman's name is Bruce Johnson [of TV channel 9].

INTERVIEWER: Yes, of course.

ALBERT BEVERIDGE: He's still interviewing, and I have to walk out. I said, okay, here it comes. Now what are they going to ask me?

In retrospect, as I look back on it, I find it somewhat amusing, but at the time it wasn't.

INTERVIEWER: No, but you did an excellent job. After all, in '78, we'd only been voting here for 10 years, you know.

ALBERT BEVERIDGE: Well, I know, but the fact is—I don't know what the registered vote was at the time but we weren't a huge jurisdiction. We should have been able to figure out a couple hundred thousand voters.

INTERVIEWER: Right, and you figured it out.

ALBERT BEVERIDGE: In the end.

INTERVIEWER: Yeah, you did. You brought it about.

ALBERT BEVERIDGE: Well—but anyway, I was personally very, very fond of Marion, and liked him. Can I tell one Marion story?

INTERVIEWER: Absolutely. Please do.

ALBERT BEVERIDGE: This is after it's over and I'm no longer on the Board of Elections, because, of course, I couldn't participate when I was on the board. So, I am just a private lawyer and Marion is running for one of his times he ran for mayor, and I think he was elected. So, I was invited to come in, along with 12, 14 other people, to help raise some money and help with the campaign.

So, we get a little pitch and Marion talks. I think this was after he had gone to jail and came back. Wasn't he elected after he was released?

INTERVIEWER: Yeah [in 1994].

ALBERT BEVERIDGE: So we go around the room, and it was a nice conversation, sort of old-timers. At the end, I forget who his assistant was, he says, "She is going to take your name. Give us your name, telephone number, and so forth, so we can contact you." So, we go around the room, writing our names down, and I stick up my hand and say, "Marion, I'm going to give you my home phone as well as my office, but please do not call me at home unless it's an emergency, because if my wife answers she will hang up on you."

[Laughter.]

ALBERT BEVERIDGE: He laughed and he said, "Is there anybody else in the same situation?" and about half of the hands in the room went up. He laughed again. So, he had a great attitude.

INTERVIEWER: No, he did have a great attitude and he was a great wooer. He really was very interested in wooing the people who, like your wife, wouldn't speak to him.

ALBERT BEVERIDGE: He knew, because we'd see him a couple of times at a big occasion, see him sort of socially, and he was always very nice to us. So, anyway, it's sort of fun to reconstruct. It's almost 40 years ago, 35, 40 years ago.

INTERVIEWER: Indeed. Thank you very much for talking with us. I appreciate it.

ALBERT BEVERIDGE: All right.